

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

2/27/2018 2:05 pm

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LEVY ROBINSON,

U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE

Plaintiff,

-against-

12-CV-1450 (SJF)(SIL)

COUNTY OF NASSAU,

ORDER

Defendant.
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FEUERSTEIN, District Judge:

Pending before the Court are the objections of defendant County of Nassau (“defendant”) to so much of the Report and Recommendation of the Honorable Steven I. Locke, United States Magistrate Judge, dated December 20, 2017 (“the Report”), as recommends, following an evidentiary hearing, that an order be entered “concluding that Plaintiff has exhausted his available administrative remedies with respect to his grievances concerning the backup of sewage near his cell . . .” and, thus, that “a trial on the merits as to th[at] claim is appropriate.” (Report at 7). For the reasons stated herein, Magistrate Judge Locke’s Report is accepted in its entirety.

I. Standard of Review

Any party may serve and file written objections to a report and recommendation of a magistrate judge on a dispositive matter within fourteen (14) days after being served with a copy thereof. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). Any portion of such a report and recommendation to which a timely objection has been made is reviewed *de novo*. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). However, to accept the report and recommendation of a

magistrate judge to which no specific, timely objection has been made, the district judge need only be satisfied that there is no clear error apparent on the face of the record. *See* Fed. R. Civ. P. 72(b); *Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000) (a court may review a report to which no timely objection has been interposed to determine whether the magistrate judge committed “plain error.”)

Whether or not proper objections have been filed, the district judge may, after review, accept, reject, or modify any of the magistrate judge’s findings or recommendations. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b).

II. Findings and Conclusion to which No Objections Made

Plaintiff does not assign any error, *inter alia*, to Magistrate Judge Locke’s conclusion that he “failed to exhaust his administrative remedies with respect to his complaint about the problems with the food during his incarceration.” (Report at 7). There being no clear error on the face of the Report with respect thereto, that branch of the Report is accepted in its entirety. Accordingly, for the reasons set forth in the Report, summary judgment is granted in favor of defendant dismissing plaintiff’s claims with respect to the alleged problems with the food during his incarceration for failure to exhaust his administrative remedies.

III. Defendant’s Objections

Defendant essentially contends, *inter alia*, that Magistrate Judge Locke erred in crediting plaintiff’s testimony over the testimony of the corrections officers to conclude that plaintiff “established that the grievance procedure was effectively unavailable to him with respect to his

claim about raw sewage in his unit[.]” (Report at 6).

Upon *de novo* review of the Report and all motion papers, and consideration of defendant’s objections to the Report, defendant’s objections are overruled and so much of the Report as recommends that an order be entered “concluding that Plaintiff has exhausted his available administrative remedies with respect to his grievances concerning the backup of sewage near his cell . . .” and, thus, that “a trial on the merits as to th[at] claim is appropriate[.]” (Report at 7), is accepted in its entirety.

IV. CONCLUSION

For the reasons set forth herein, defendant’s objections are overruled, the Report is accepted in its entirety and, for the reasons set forth in the Report, summary judgment is granted in favor of defendant dismissing plaintiff’s claims with respect to the alleged problems with the food during his incarceration in their entirety with prejudice for failure to exhaust his administrative remedies, but plaintiff has exhausted his available administrative remedies with respect to his grievances concerning the backup of sewage near his cell and is entitled to a trial on the merits as to that claim.

SO ORDERED.

/s/
Sandra J. Feuerstein
United States District Judge

Dated: February 27, 2018
Central Islip, New York